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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/852,447	05/09/2001	Gary E. Ross	3125.00003	5137

48924 7590 12/04/2007
KOHN & ASSOCIATES, PLLC
30500 NORTHWESTERN HWY
STE 410
FARMINGTON HILLS, MI 48334

EXAMINER

HILLERY, NATHAN

ART UNIT	PAPER NUMBER
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2176

MAIL DATE	DELIVERY MODE
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12/04/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/852,447

Applicant(s)

ROSS, GARY E.

Examiner

Nathan Hillery

Art Unit

2176

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2007.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37-CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is responsive to communications: Amendment filed on 10/2/07.
2. Claim 52 is pending in the case. Claim 52 is independent.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Iliff (US 20020002325 A1).

Iliff teaches that a Node Object (NO) describes the software elements required to ask a single, well-defined question of the patient and to return the response selected by the patient. It is the task of the NO to present the required data to the GUI in a form that will appear user-friendly manner on the user display (paragraph block 0191), which meet the limitation of **inputting patient data into information prompting forms**;

Iliff teaches that it is the task of the NO to possibly re-prompt the user (paragraph block 0191), which meet the limitation of **navigating through additional information prompting forms relevant to a patient encounter**;

Iliff teaches that it is the task of the NO to present the required data to the GUI in a form that will appear user-friendly manner on the user display, to wait an appropriate amount of time for a user response, to possibly re-prompt the user, and to ultimately

Art Unit: 2176

return the user's response (paragraph block 0191), which meet the limitation of **displaying previously entered information and corresponding conclusions;**

Iliff teaches that the synergy invention approximates the cognitive process of a human medical expert by providing for non-linear weighting of symptoms, by incrementally adding small weights to account for fine differences in patient health states (paragraph block 0297), which meet the limitation of **selecting the desired information and corresponding conclusions to be augmented;**

Iliff teaches that at decision state 422, if the diagnostic mode is to select the candidate disease using some other criterion such as direct patient input, function 120 moves to state 424, which uses some other criterion in a similar manner to select the disease (paragraph block 0423), which meet the limitation of **providing at least one of alternative conclusions and additional criteria to be inputted;**

Iliff teaches that the synergy invention approximates the cognitive process of a human medical expert by dynamically guiding the diagnostic process itself into productive channels (paragraph block 0297), which meet the limitation of **choosing at least one of the previously entered information, corresponding conclusions, alternative conclusions, and additional criteria;**

Iliff teaches that the use of diagnostic weights for simple symptom values is a first-order effect (paragraph block 0449), which meet the limitation of **calculating more accurate conclusions based upon all entered information and related predetermined criteria;**

Art Unit: 2176

Iliff teaches that FIG. 28 depicts a form or screen display that lets a patient arrange a set of symptoms into the time order in which they actually occurred in the patient. This is one embodiment that uses a graphic user interface and input form to obtain the patient's input (paragraph block 0482), which meet the limitation of **displaying a selection of prompted information forms;**

Iliff teaches that the use of time-based synergistic values is a second-order effect, a mathematical "fine-tuning" that helps to differentiate competing diagnoses (paragraph block 0449), which meet the limitation of **providing more accurate and alternative conclusions, and predetermined criteria supporting the conclusions;**

Iliff teaches that the Update and Record function 160 (FIG. 1) will be described. Prior to entry into Function 160, the diagnostic loop 100 has just recomputed the diagnostic weights of all candidate diseases based on some new value for the current focus symptom (paragraph block 0466), which meet the limitation of **choosing, adding, deleting, or modifying a conclusion;**

Iliff teaches that it is the task of the NO to possibly re-prompt the user (paragraph block 0191), which meet the limitation of **providing additionally prompted information forms;**

Iliff teaches that the system updates all working lists and records with new values, scores, and diagnoses (paragraph block 0414), which meet the limitation of **recording and saving the calculated conclusions;** and

Iliff teaches that a diagnostic report is prepared that summarizes the actions taken and the results computed (paragraph block 0413), which meet the limitation of **summarizing all entered data**.

Iliff does not explicitly teach **information prompting forms**.

However, it would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the GUI and input form (paragraph block 0482) of Iliff for the claimed information prompting forms to achieve the predictable result of a form that will appear in a user-friendly manner on the user display (paragraph block 0191).

Response to Arguments

5. Applicant's arguments filed 10/2/07 have been fully considered but they are not persuasive.
6. In response to applicant's argument that the presently pending independent claim is directed towards a health-care provider-interactive method for supporting and augmenting a diagnosis as needed for appropriate DRG assignment (p 5, first paragraph), a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.
7. Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

Art Unit: 2176

8. In response to applicant's arguments, the recitation "clinician documentation method for use with an electronic processing device to better support and define a medical diagnosis as needed for appropriate DRG assignment" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 2176

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan Hillery whose telephone number is (571) 272-4091. The examiner can normally be reached on M - F, 10:30 a.m. - 7:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doug Hutton can be reached on (571) 272-4137. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NH

/Doug Hutton/
Doug Hutton
Supervisory Primary Examiner
Technology Center 2100